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VERIZON WIRELESS

**Petition for Arbitration Pursuant to
Section 252(b) of the Telecommunications
Act of 1996 to Establish an Interconnection
Agreement with Illinois Bell Telephone
Company d/b/a Ameritech Illinois**

Docket 01-0007

**AMERITECH ILLINOIS'
BRIEF ON EXCEPTIONS**

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Illinois Bell Telephone Company (“Ameritech Illinois”), respectfully submits its Brief on Exceptions. Ameritech Illinois is grateful for the Hearing Examiners’ thorough consideration of the record and their comprehensive treatment of the parties’ disagreements. The HEPAD appropriately addresses all the issues as the parties presented them, and thus paves the way for what should be a straightforward process of preparing the conforming interconnection agreement.

Ameritech Illinois takes exception to the HEPAD on Issues I.A, I.C, 4, 6, AIT-2 and AIT-7. On some of these issues, Ameritech Illinois does not object to the HEPAD’s core conclusion, but requests limited clarification.

Proposed substitute language for each issue on which Ameritech Illinois takes exception appears in the Attachment hereto.

Issue 1.A: Direct Trunking

Ameritech Illinois suggests that the Arbitration Decision set forth specific language (identified below) for the parties’ interconnection agreement so as to avoid any possibility of future disagreement about the Commission’s resolution of this issue.

The disputed contract language that was the subject of Issue 1.A was Ameritech Illinois’ proposed section 5.4.4. As the HEPAD notes (at p. 5), Staff generally supported Ameritech Illinois’ proposal, but “contend[ed] that Verizon should not be required to direct trunk to an end office where there are facilities from Verizon to the tandem, and from the tandem to the end office.” As Ameritech Illinois stated in its post-hearing reply brief (at pp. 2-3), “[t]he concept behind Staff’s proviso is acceptable to Ameritech Illinois,” but with the clarification that the references to “tandem” in Staff’s proviso were intended as references to Ameritech

Illinois' tandem *building*, as opposed to the tandem switch itself. As Ameritech Illinois explained (*id.*), there is good reason to believe that is what Staff intended.

The HEPAD accepts Ameritech Illinois' proposal, but with Staff's proviso, and Ameritech Illinois has no objection to that per se. Ameritech Illinois is concerned, however, that the discussion of Staff's proviso in the fourth and fifth paragraphs of the Commission Analysis and Conclusion on Issue 1.A is susceptible of differing interpretations, which could lead to disagreement between the parties in the preparation of a conforming contract. To ensure against that, Ameritech Illinois suggests that the Arbitration Decision set forth specific language Agreement section 5.4.4. The language that Ameritech Illinois suggests is section 5.4.4 as Ameritech Illinois proposed it at hearing, but with (1) the time periods changed to reflect the time periods provided in the HEPAD, and (2) additional language reflecting Ameritech Illinois' understanding of the Staff proviso that the HEPAD endorsed. Specifically, Ameritech Illinois suggests that the Commission direct the parties to include the following section 5.4.4 in the Agreement:

If the traffic from a single Carrier MSC through any Telco Tandem Switch destined for any specific other Telco switch or third party switch at any time during each month of a three month period requires 24 or more fully utilized Trunks (24 fully utilized Trunks shall be deemed for purposes of this Agreement, to consist of 864 CCS, per ERLANG B Capacity Table, during the Carrier busy hour), then (a) in instances where the traffic is destined for a Telco switch, the Carrier shall establish within one hundred twenty (120) Days a two-way (where such is available) direct End Office Trunk Group to Telco end office; and (b) in instances where the traffic is destined for a third party switch, Carrier shall exercise best efforts to establish direct interconnection with that third party within 120 Days or as soon thereafter as possible, and thereby to cease transiting through Telco's Tandem Switch traffic destined for that third party switch. Provided, however, that (1) where Verizon Wireless-dedicated facilities exist that will permit Verizon Wireless to deliver traffic to a point of interconnection at Ameritech Illinois' tandem building for its traffic then to be delivered to the Ameritech Illinois end office without going through the tandem switch, Carrier

shall not be required to establish an additional direct End Office Trunk Group, but may instead deliver its traffic to such point of interconnection at the Ameritech Illinois' tandem building, and (2) the one hundred twenty (120) day periods set forth above shall be one hundred eighty (180) Days in all instances where Carrier's duty to establish a direct End Office Trunk Group or direct interconnection with a third party is triggered as of the Effective Date of this Agreement).

Issue 1.C: Points of Interconnection

Ameritech Illinois agrees with the Hearing Examiners' conclusion that the parties agreed, in their briefs, that formerly disputed language of the interconnection agreement (specifically sections 2.1.7.5 through 2.1.7.6) will mirror the language set out in 47 C.F.R. § 51.305.

Based on Verizon Wireless' initial post-hearing brief, Ameritech Illinois believes it is possible (though unlikely) that Verizon Wireless will take exception to the HEPAD's silence with respect to section 2.1.6 of the Agreement. In case Verizon Wireless does raise section 2.1.6 in its brief on exceptions, Ameritech Illinois notes that the parties resolved all of their differences with respect to section 2.1.6, as demonstrated at pages 5-6 of Ameritech Illinois' Post-Hearing Reply Brief.

Issue 4: Reciprocal Compensation Rate To Be Charged By Verizon Wireless

As the HEPAD correctly notes (at p. 10), the parties disagree as to whether Verizon Wireless, in order to be entitled to charge the tandem reciprocal compensation rate, must, as Ameritech Illinois maintains, meet both a geographic area and functional similarity test or, as Verizon Wireless maintains, only a geographic area test. The HEPAD concluded that that disagreement did not need to be resolved, because Verizon Wireless satisfied both tests. (*Id.*) Ameritech Illinois takes exception to the HEPAD analysis and conclusion on Issue 4. As we

demonstrate in Section I below, Verizon Wireless must satisfy both the geographic area test and the functional similarity test, and, as we demonstrate in Section II below, the Commission cannot avoid deciding that point, because Verizon Wireless did not satisfy the functional similarity test. Accordingly, Verizon Wireless is not entitled to charge the tandem reciprocal compensation rate, and the Agreement should provide that Verizon Wireless will charge only the end office reciprocal compensation rate when it terminates local traffic that originates on Ameritech Illinois' network.

I. VERIZON WIRELESS MUST SATISFY THE FUNCTIONAL SIMILARITY TEST, IN ADDITION TO THE GEOGRAPHIC COVERAGE TEST, TO QUALIFY TO CHARGE THE TANDEM RATE.

Under paragraph 1090 of the FCC's *First Report and Order*, Verizon Wireless would be entitled to charge the tandem rate if and only if it could satisfy two tests: First, that its switch serves a geographic area comparable to that served by Ameritech Illinois' tandem switch (the "geographic coverage test"); and, second, that its switch performs similar functions on behalf of Ameritech Illinois as Ameritech Illinois' tandem performs on behalf of Verizon Wireless (the "functional similarity test").

Verizon Wireless maintains it can qualify to charge the tandem rate by satisfying only the first of these two tests, the geographic coverage test. The law is to the contrary. Indeed, this Commission has already ruled that to qualify to charge the tandem rate, a requesting carrier must pass both the geographic coverage test and the functional similarity test. In its Arbitration Decision in Docket No. 96-AB-001, the Commission held:

[The FCC's rule] provides that the tandem interconnection rate should be used if the competitive local exchange carrier's switch "serves a geographical area comparable to the area served by the incumbent LEC's tandem switch." States are also instructed to consider whether new technologies . . . *perform functions*

similar to those performed by an incumbent LEC's tandem switch.”
... The FCC's rule is based on the geographic area served by, *and the technological functionality of*, the competitive carrier's switch.

Id. at 7-8. Having thus embraced the two-part test established by the FCC, the Commission went on to award the competitive carrier (TCG) the tandem rate, based on its determination that TCG's switch served a geographic area comparable to the area served by Ameritech's tandem, and that TCG's switch “performs tandem functions.” *Id.* at 8.

Later, in an arbitration between Ameritech Illinois and MCI, the Commission summarized its decision in the TCG arbitration, stating that it there “concluded that TCG [was] entitled to the tandem switched termination rate because it switch serves a geographic area comparable to the area served by Ameritech Illinois' tandem switch, *and performs the same functions as a tandem switch.*” (Arbitration Decision, Docket No. 96-AB-006, at 10.)

Moreover, the federal courts agree that a requesting carrier must satisfy not only the geographic coverage test, but also the functional similarity test in order to qualify for tandem treatment. *E.g., US West Communications v. MFS Internet, Inc.*, 193 F.3 1112, 1124 (9th Cir. 1999) (“The [State] Commission properly considered whether MFS's switch performs similar functions and serves a geographic area comparable to US West's tandem switch”); *U.S. West v. Pub. Serv. Comm. of Utah*, No. 97 CV 558, slip op. at 8-9 (D. Utah Nov. 23, 1999) (“This Court also agrees” that “a geographic analysis alone is an insufficient basis upon which to uphold a rate determination” and that the rate should be determined by whether [the switch] “functions like a tandem switch, and geography should be considered”); *U.S. West v. Wash. Util. and Transp. Comm.*, No. C97-5686JR, slip op. at 6-7 (W.D. Wash. August 31, 1998) (holding that *First*

Report and Order ¶ 1090 requires consideration of functionality and geography, not geography alone).

Thus, the law is clear, Verizon Wireless must satisfy not only the geographic coverage test but also the functional similarity test in order to qualify to charge the tandem rate. Verizon Wireless' attempt to undo this established legal principle is unavailing. In particular:

1. Verizon Wireless' citation to the Focal/Ameritech Illinois arbitration (VW Br. at 25-26¹) leads nowhere. In that case, "Staff agree[d] with Ameritech that Focal must meet both a geographic and system functionality test before being granted the opportunity to receive reciprocal compensation at the tandem rate for the transport and termination of local traffic." Arbitration Decision, Docket 00-0027 (May 8, 2000), at 6-7. The Commission found that it "need not reach that issue here, because Focal has satisfied both tests." *Id.* at 7. Thus, the Focal case (1) left intact the Commission's earlier holdings that the requesting carrier must meet both the geographic coverage test and the functional similarity test (*see* AIT Br. at 12-13), and (2) had Staff unequivocally endorsing reaffirmation of those holdings.

2. Verizon Wireless' attack on Ameritech Illinois witness Way's level of familiarity with the governing law (VW Br. at 26) is both unbecoming and futile. Ameritech Illinois' position on this legal issue does not rely on Mr. Way's "lay-person examination of . . . the *First Report and Order*," or on his understanding of the Code of Federal Regulations (*see id.*). Ameritech Illinois' legal position relies on the unbroken line of federal court and state commission decisions that have held that the law is as Ameritech Illinois contends it is.

1 "VW Br." is the Initial Brief of Verizon Wireless.

3. Verizon Wireless' contention that Ameritech Illinois did not advocate the functional similarity test in the Level 3/Ameritech Illinois arbitration (VW Br. at 26-27) can only be described as an attempt to mislead the Commission. As the Commission correctly stated in its August 30, 2000, Arbitration Decision in that case (Docket 00-0332), at page 4, "Ameritech's Position" was that "Level 3 should not receive the rate for either the tandem or transport elements of termination unless and until the following conditions are satisfied: (i) it proves that its switch serves a geographic area comparable to that served by AI's tandem switch and (ii) it proves that its switch performs the same functions on behalf of AI as AI's tandem performs." The Ameritech Illinois-proposed language that Verizon Wireless quotes at pages 26-27 of its brief was 100% consistent with that position; it included the functional similarity test in the analysis by its requirement that 47 C.F.R. § 51.771(a)(3) be "applied consistently with paragraph 1090 of the FCC's First Report and Order" – the paragraph that makes clear that functional similarity is part of the test.

In sum, the law is clear, in Illinois and throughout the country, that a requesting carrier must satisfy both the geographic coverage test and the functional similarity test in order to be entitled to charge reciprocal compensation at the incumbent carrier's tandem rate.

II. VERIZON WIRELESS' MTSOS DO NOT SATISFY THE FUNCTIONAL SIMILARITY TEST.

The HEPAD's conclusion that Verizon Wireless' MTSOs satisfy the functional similarity test is based in part on the HEPAD's determinations that

Verizon Wireless' MTSOs need not "operate in precisely the same manner as Ameritech's tandem switches," but "need only perform functions 'similar to' those performed by Ameritech's tandems" (HEPAD at 10);

The FCC's functional similarity test addresses "distinctions between the modern CLEC network architecture . . . and the hub and spoke architecture utilized by most ILECs" (*id.*); and

"The functionality test does not require a piece by piece comparison of the two networks" (*id.*).

Ameritech Illinois does not disagree with any of those propositions. The question remains, however, whether Verizon Wireless' MTSOs perform functions sufficiently similar to Ameritech Illinois' tandems to require Ameritech Illinois to pay Verizon Wireless reciprocal compensation at the same rate as Verizon Wireless pays Ameritech Illinois when Ameritech Illinois terminates a Verizon Wireless-originated call through one of its tandems. The answer to that question is no, because Verizon Wireless' MTSOs do not perform the core function of a tandem switch: the switching of traffic from trunk to trunk, *i.e.*, connecting one switch to another. Staff witness Murray agreed that a "tandem switch has as its basic function to receive traffic coming in on trunk groups from other switches and to route traffic on to switches." (Tr. 314.) More important, the FCC – which after all is the agency whose reciprocal compensation rule the Commission is implementing here – says the same thing:

The tandem switching functionality network element is defined as (i) trunk-connect facilities . . . [and]; (ii) *the basic switching function of connecting trunks to trunks*

(47 C.F.R. § 51.319(c)(2) (emphasis added).)

Whatever else they may do, Verizon Wireless' MTSOs' essential function is not to connect trunks to trunks or, typically, switches to switches. We say "typically" because there are circumstances in which, according to Verizon Wireless witness Clampitt, Verizon Wireless' base station controllers perform a switching function, namely, when the Verizon Wireless customer to whom the call is being terminated is actually mobile, in which event the base station controller

may be called upon to transfer the call from one cell site to another – or to another base station controller. (Tr. 76-77.) For such calls, Verizon Wireless may be entitled to tandem compensation under the FCC's rules, because, for such calls, Verizon Wireless' MTSO is arguably performing the essential tandem function of connecting two switches. Plainly, though, Verizon Wireless is not entitled to the tandem reciprocal compensation rate for calls that it terminates to customers that are not on the move during the course of the call. And since Verizon Wireless is claiming the benefit of the tandem rate, it should be Verizon Wireless' burden to show what percentage of its traffic is terminated to customers that are actually mobile during the course of the call. Absent such a showing, Verizon Wireless would be over-compensated, in violation of section 252(d)(2) of the 1996 Act, if the Commission were to award it the tandem rate for all local calls that it terminates.²

Note that Ameritech Illinois is not contending that Verizon Wireless MTSOs must perform exactly like Ameritech Illinois' tandem switches, or that the Commission must make a point-by-point comparison of the parties' networks. Rather, Ameritech Illinois is contending that Verizon Wireless' MTSOs do not perform the quintessential function of tandem switches and, for that reason, that Verizon Wireless cannot satisfy the functional similarity test.

Given the abundant but conflicting evidence on both sides, the Commission may be uncertain how to resolve Issue 4. If so, Ameritech Illinois urges the Commission to take into

² The Commission should not presume that most traffic that Verizon Wireless terminates is to customers on the move merely because mobility is a key feature of the service Verizon Wireless provides. While there is no record on the matter one way or the other, common experience suggests that however much wireless customers may tend to be on the move when they originate calls, they tend to be on the move significantly less when calls are placed to them. Ameritech Illinois is not suggesting that the Commission accept this proposition as fact, but is merely pointing out that it would be a mistake for the Commission to award Verizon Wireless the tandem rate on all calls based on an assumption that most calls that Verizon Wireless terminates are to customers in transit.

account the bottom line rule of law that Ameritech Illinois emphasized in its initial post-hearing brief: If anything is clear, it is that section 252(d)(2) of the 1996 Act entitles Verizon Wireless only to be compensated for its costs of terminating traffic that originates on Ameritech Illinois' network, and that for Verizon Wireless to be over-compensated for its actual (forward looking) costs would be unlawful. The FCC's symmetry rule (47 C.F.R. § 51.711(a)) and the geographic coverage and functional similarity tests of paragraph 1090 of the FCC's *First Report and Order* are there only to implement section 252(d)(2).

Here, the largest wireless carrier in the country has opted not to show its actual costs, even though it knows that if those costs were higher than Ameritech Illinois' it could charge a higher reciprocal compensation rate than Ameritech Illinois – higher even than Ameritech Illinois' tandem rate. From this the Commission can fairly infer that Verizon Wireless knows (or believes) that its transport and termination costs are lower than Ameritech Illinois'. (See Ameritech Illinois' Initial Post-Hearing Brief at 11.) Accordingly, if the evidence leaves the Commission uncertain how to resolve Issue 4, it should resolve the issue against Verizon Wireless.

Issue 6: Netting

Ameritech Illinois agrees with the HEPAD's analysis and conclusion on Issue 6, but respectfully proposes alternative contract language that Ameritech Illinois believes would more clearly achieve the HEPAD's intended purpose. The HEPAD would have the Agreement include the following sentence:

Disputed claims may not be netted by the Parties.

Ameritech Illinois proposes that the Agreement instead include the following sentence:

There will be no netting by the billed Party of any payment it owes hereunder against any amount that the billed Party has billed the other Party and that the other party disputes.

Ameritech Illinois believes that this language states very precisely what the HEPAD intended, and eliminates an ambiguity (or at least a potential for a later claim of ambiguity) in the HEPAD's recommended language.

Issue AIT- 2 Billing of Transit Traffic

Ameritech Illinois supports the HEPAD on Issue AIT-2 in all but one respect. At page 26, the HEPAD states that the wording of section 8.2 as proposed by Ameritech Illinois is imprecise, and concludes that the Agreement should include a section 8.2 very similar to, but not identical to, Ameritech Illinois' proposed section 8.2. The difference between the two is as follows, with the Ameritech Illinois language that the HEPAD would eliminate shown in strike-through and the language that the HEPAD would substitute underlined:

Each Party shall separately list on its bill to the other Party for reciprocal compensation the Conversation MOUs representing Transit Traffic. If Carrier [Verizon Wireless] does not record and identify the actual amount of Transit Traffic delivered to it through Telco's [Ameritech Illinois'] Transiting Service, then Carrier shall deduct from the amount of total Conversation MOUs on its bill to Telco for reciprocal compensation a percentage that is equal to the ~~percentage on Telco's bill for the same time period that Transit Traffic minutes bear to the total billed Conversation MOUs~~ amount Carrier bills third-party carriers for reciprocal compensation. This adjustment will account for Transit Traffic delivered to Carrier by Telco.

The rationale for Ameritech Illinois' formulation was set forth in footnote 11 to Ameritech Illinois' Initial Post-Hearing Brief (at p. 48): "Assume that Verizon Wireless does not record and identify the actual amount of transit traffic it receives from Ameritech Illinois. Assume further that in a given month, Verizon Wireless receives 100,000 minutes of local traffic (what section 8.2 calls "Conversation MOUs") from Ameritech Illinois. Verizon Wireless knows

that some of those 100,000 minutes are transit traffic, for which Verizon Wireless is not supposed to bill Ameritech Illinois reciprocal compensation, but Verizon Wireless does not know how many minutes are transit traffic, because it doesn't record and identify transit traffic as such. But during the same month, Ameritech Illinois receives 150,000 minutes of local traffic from Verizon Wireless, and 15,000 of those minutes are transit traffic – traffic that goes from Verizon Wireless to Ameritech Illinois and then on to a third carrier. Since 10% of the local traffic that Ameritech Illinois receives from Verizon Wireless is transit traffic, section 8.2 says that 10% of the local traffic that Verizon Wireless receives from Ameritech is deemed to be transit traffic. So, for the month in question, Verizon Wireless will bill Ameritech Illinois reciprocal compensation on 90,000 of the 100,000 total minutes it received from Ameritech Illinois, and will not bill reciprocal compensation on the remaining 10,000 minutes.”

Ameritech Illinois believes that its formulation, which uses percentages, rather than absolute amounts, achieves the intended purpose (of both the provision and the HEPAD) – namely, to deduct from the total minutes of traffic that Verizon Wireless receives from Ameritech Illinois a number (arrived at by the ratio or percentage method described above) that is the best available approximation of the number of those minutes that are transit traffic.³ On the other hand, Ameritech Illinois believes that the formulation in the HEPAD, which has a dollar amount being subtracted from a percentage, would not accomplish the intended purpose.

³ The HEPAD (p.26) should be changed to read: Verizon presents no alternative to Ameritech's proposed language. Moreover, Verizon does not contest Ameritech's assertion that the percentage of traffic that is transit traffic flowing in one direction is approximately the same as the percentage of traffic that is transit traffic flowing in the other.

Ameritech Illinois therefore suggests that its section 8.2 as originally proposed be included in the parties' agreement.

Issue AIT-7: Tariff Notice

Ameritech Illinois agrees with the HEPAD on Issue AIT-7, but suggests a minor wording change in the last sentence of the Commission Analysis and Conclusion. That sentence now reads, "The Interconnection Agreement should be amended to reflect the Commission's decision." Inasmuch as the effect of the recommended conclusion is not actually to "amend" the Agreement, but instead to exclude Verizon Wireless' proposed notice language, Ameritech Illinois suggests that the sentence be changed to read, "The Agreement will not include Verizon Wireless' proposed notice language for section 28.1."

CONCLUSION

For the reasons set forth above and in its post-hearing briefs, Ameritech Illinois urges the Commission to adopt as its Arbitration Decision the HEPAD, modified as set forth above and in the Attachment hereto.

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Respectfully submitted,

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